

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Centflor Manufacturing Co., Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Year 1979. :  
\_\_\_\_\_:

AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Centflor Manufacturing Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Centflor Manufacturing Co., Inc.  
545 W. 45th St.  
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
6th day of May, 1983.

David Parchuck

James A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Centflor Manufacturing Co., Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Year 1979. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Stephen H. Feuerstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen H. Feuerstein  
Feuerstein, Gruber & Heitner  
450 Seventh Ave.  
New York, NY 10001

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
6th day of May, 1983.

David Parchuck

James A. Sheppard

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

May 6, 1983

Centflor Manufacturing Co., Inc.  
545 W. 45th St.  
New York, NY 10036

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stephen H. Feuerstein  
Feuerstein, Gruber & Heitner  
450 Seventh Ave.  
New York, NY 10001  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
CENTFLOR MANUFACTURING CO., INC.  
for Redetermination of a Deficiency or for  
Refund of Corporation Tax under Articles 9-A  
and 27 of the Tax Law for the Year 1979.

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DECISION

Petitioner, Centflor Manufacturing Co., Inc., 545 West 45th Street, New York, New York 10036, filed a petition for redetermination of a deficiency or for refund of corporation tax under Articles 9-A and 27 of the Tax Law for the year 1979 (File No. 34253).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1982 at 1:35 P.M. Petitioner appeared by Stephen H. Feuerstein, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

#### ISSUE

Whether petitioner's late filing of its corporation franchise tax report for the tax year 1979 is excusable for reasonable cause.

#### FINDINGS OF FACT

1. On June 19, 1980 petitioner, Centflor Manufacturing Co., Inc., filed its New York State Corporation Franchise Tax Report for the year 1979. On July 21, 1980 the Audit Division issued a Notice and Demand for Payment of Corporation Tax Due against petitioner for interest of \$673.39 and penalty of \$6,040.74, for a total due of \$6,714.13 for the taxable year 1979. The basis

for the notice was the fact that petitioner had filed its report three months late without applying for an extension.

2. On September 19, 1980 petitioner filed an amended 1979 return claiming a refund of \$10,437.07. The claim was approved on April 6, 1981 to the extent of \$10,224.62. This amount, less the penalties and interest at issue herein, was paid to petitioner. Petitioner, by letter dated May 14, 1981, requested a refund of the amount withheld from the refund payment on the ground that it had reasonable cause for not filing the tax return when due. The Audit Division denied petitioner's request for a refund by letter dated June 1, 1981.

3. Petitioner was in the business of importing and mixing oils and fragrances from various parts of the world and reselling them domestically and internationally. The company began operations in 1943 and was incorporated under the laws of New York State in 1959.

4. From the company's inception in 1943 until 1979, petitioner had retained the services of the same CPA as its accountant. The accountant was approximately 74 years old during the year in issue.

5. In 1977 petitioner lost the services of its bookkeeper. Due to this loss, petitioner's accountant fell behind in the preparation of tax returns. When petitioner's officers discovered that their accountant was going to be late in preparing and filing the return in issue herein, they requested that he take the necessary steps to file for an extension of time to file.

6. Petitioner filed for an extension of time with the Internal Revenue Service but not with the New York State Department of Taxation and Finance. The accountant erroneously believed, and so advised petitioner, that obtaining an extension of time from the Internal Revenue Service was sufficient for

obtaining an extension from New York State. In fact, petitioner filed a copy of its Federal application for extension with the late filed New York return.

7. Petitioner accepted its accountant's advice as correct and was not aware of any errors until it received the Notice and Demand. The accountant's services to petitioner were terminated subsequent to the filing of the 1979 corporate return.

8. From petitioner's inception in 1943 until the year in issue herein, petitioner had never sustained a penalty for the late filing of its corporate tax returns.

#### CONCLUSIONS OF LAW

A. That pursuant to section 1085(a) of the Tax Law, there shall be added to the amount of tax due an additional sum for the failure to timely file a Corporation Franchise Tax return and for failure to pay the tax due thereon, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

B. That regulation 20 NYCRR 9-1.5(c), in effect during the period in issue, provided that reasonable cause may include reliance on advice of a competent advisor such as an attorney or accountant.

C. That petitioner's reliance on the advice of an accountant who had been in its employ for some 36 years, during which time the company had never filed a late return, was reasonable cause for filing a late return without requesting an extension within the meaning and intent of section 1085(a) and 20 NYCRR 9-1.5(c) (See Matter of Tintrup Dental Laboratory, Inc., State Tax Commission, January 22, 1982).

D. That the petition of Centflor Manufacturing Co., Inc. is granted and the Notice and Demand for Payment of Corporation Tax Due issued July 21, 1980 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

*Roderick W. Clem*  
~~ACTING~~ PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Hall*  
COMMISSIONER